

N.D.A.G. Letter to Kinsey (May 7, 1986)

May 7, 1986

Mr. Robert W. Kinsey
Divide County State's Attorney
P. O. Box 30
Crosby, North Dakota 58730

Dear Mr. Kinsey:

Thank you for your February 19, 1986, letter requesting clarification of Attorney General's Opinion 86-2, and an opinion as to whether the Divide County Commission may appropriate \$20,000 in general fund moneys for a recreation project. I apologize for the delay in responding.

Before responding to your questions, the facts in this situation will be set forth.

In 1973, a water management district was established in Divide County. For the first four years, the district requested money for a proposed recreation dam. The County Commission approved the requests and levied taxes for them. The money received was transferred to the district. The proposed recreation dam was never constructed. The money and the interest earned has accumulated in the district's coffers. By 1985, a total of \$90,000 had accumulated.

The Commission continued to levy for the district's operations because they did not realize the funds were accumulating. When the Commission realized the district had accumulated \$90,000, the Commission requested the depository bank to transfer the money to the county general fund. The Commission then applied the \$90,000 to the current tax year's financial obligations.

At some point, the district requested an Attorney General's opinion addressing whether a district could accumulate funds and whether a county commission could transfer a district's funds to the county general fund. The opinion, 86-2, concluded a district may accumulate funds and a commission may not cause such a transfer.

However, the Commission is not without an ability to regulate funds accumulated by a district. Opinion 86-2 states: "[a]ll funds expended by a water resource board must be approved by its board of county commissioners." Consequently, while the Commission does not have direct authority over a district's budget, once funds have been paid to the district the Commission may exercise indirect control in two ways. The Commission may refuse to approve expenditures in the budgeting process or refuse to levy an assessment for the district's operations. It might continue to exercise these means of fiscal control until accumulated funds have been expended.

Use of either means will benefit taxpayers (although not as immediate or as large as the benefit of a one-year \$90,000 tax reduction) because a levy for district operations may not be required for several years. We caution, however, that if the money was accumulated in a manner differently from the facts set forth above (e.g., for maintaining a drain or assessment for a legal drain), use of the money would be limited to those purposes. The district could not tap those funds for general operations.

Your second question is whether the Commission may appropriate \$20,000 for a state Game and Fish Department recreation project. The Commission possesses "the power conferred by statute, and no more." Fox v. Jones, 102 N.W. 161, 162 (N.D. 1905). Powers of local governmental bodies are strictly construed. See James v. Young, 43 N.W.2d 692, 696 (N.D. 1950). The Commission is not vested with authority to become directly involved in recreation projects. Rather, the Legislature has given this authority to water resource districts and county park boards. See N.D.C.C. 61-16.1-09(10) and 11-28-05 (1985).

In each instance the Commission exercises an indirect control over these entities by controlling the amounts levied for the purposes requested. Furthermore, the Legislature has placed a cap upon the amount which can be spent on a recreation project by limiting the amount which may be levied for recreational projects. To allow increased expenditures from the general fund without a vote of the people would effectively circumvent the Legislature's cap. Thus, the Commission may not directly contribute funds from its general fund for recreation projects, but must rely upon the funding sources established for the water resource district and county park board.

We hope this has clarified our Opinion 86-2. If you have further inquiries, Please contact us.

Sincerely,

Nicholas J. Spaeth

pg